

AMENDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AND FOR OTHER PURPOSES

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DECEMBER 31, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 4194]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4194) to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### PURPOSE OF THE BILL

The purpose of H.R. 4194 is to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

### BACKGROUND AND NEED FOR LEGISLATION

The Alaska Native Claims Settlement Act of 1971 (ANCSA) extinguished all claims based on aboriginal title to lands and waters in Alaska. In exchange, Congress conveyed fee title to 44 million acres of public lands in Alaska and nearly \$1 billion to Alaska Natives. The Act divided the state into twelve geographic regions “composed as far as practicable of Natives having a common heritage and sharing common interests,” and listed approximately 200 Villages with 25 or more Native residents where they formed a ma-

jority of the population. ANCSA directed the Regions and Native Villages to form for-profit business corporations organized under the laws of Alaska to manage the settlement lands and funds. Fee title to the surface estate to the lands was divided among both the Regional and Village Corporations, while the Regional Corporations obtained fee title to the subsurface estate of all these lands.

Though Alaska Native Corporations are private entities, ANCSA prescribed a host of attributes and conditions under which they must operate. For example, settlement lands conveyed to the ANCSA Corporations are treated as private property subject to State regulation, but they are nontaxable until developed. While ANCSA Corporations may buy, sell, or trade their lands like any private landowner, shares issued by the Corporations are not publicly traded or sold. Importantly, section 7 of ANCSA requires that 70% of revenues derived by a Regional Corporation from the development of timber and mineral resources on its settlement land be shared with the other Regional Corporations, which must in turn redistribute these benefits to Village Corporations in their regions and to at-large shareholders (at-large shareholders of a Regional Corporation do not own shares in a Village Corporation).

Depending on its population, each Alaska Native Village of 25 or more residents is entitled to the surface estate to a minimum of 69,120 acres and a maximum of 161,280 acres of public land for its Village Corporation. Relevant to Alexander Creek, ANCSA provides that a Village of fewer than 25 Native residents may form a "Group Corporation" entitled to a maximum of 7,680 acres.

Alexander Creek is located 27 miles northwest of Alaska's largest city of Anchorage. Though not listed in ANCSA as a Native Village, Alexander Creek used an administrative process to obtain Village status through which the Bureau of Indian Affairs (BIA) initially determined it had more than the requisite 25 members. This precipitated administrative appeals and litigation filed by various parties, which protested Alexander Creek's status as a Village largely over fears that its ANCSA land entitlement might create land selection and land use disputes with other parties, including the State, the Mat-Su Borough, and those seeking to preserve access to public lands and waters.

On an appeal of Alexander Creek's status in 1974, the Department of the Interior Alaska Native Claims Appeals Board (ANCAB) decided that there were only 22 Native people enrolled to Alexander Creek, three short of meeting the eligibility requirements for a Village. Alexander Creek residents claimed that not all of its enrollees were properly counted because the BIA failed to notify them of the administrative proceedings where they could have testified as to their status.

Alexander Creek filed a lawsuit that resulted in protracted litigation. The case eventually went to the U.S. Court of Appeals for the District of Columbia Circuit, which reversed Interior's determination but remanded the case to a lower court for further proceedings. This led to negotiations that resulted in Alexander Creek organizing as a Group Corporation rather than a Village Corporation. Subsequent leadership of Alexander Creek petitioned Congress for Village status.

On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 4194, and heard testimony from

Stephanie Thompson, the President of Alexander Creek, and the Obama Administration. Ms. Thompson submitted materials in the record demonstrating that a number of Natives (who have since passed away) were not given a fair opportunity to testify before the BIA as to their membership in Alexander Creek. The Interior Department opposed the bill on the grounds that a final settlement over the Group's status was struck and that it should not be reopened. It should be noted, however, that ANCSA has been amended numerous times by Congress. It is further important to note that Native Villages recognized pursuant to ANCSA are not Indian "tribes". They possess a unique history of relations with the federal government that is not comparable to those of recognized Indian tribes in the contiguous United States.

The opposition of the Obama Administration is inexplicable given its recent settlement of claims of Indians and tribes from other states for billions of dollars at the same time it opposes this bill, which does not specifically direct the expenditure of any funds to resolve Alexander Creek's claims as an Alaska Native Village.

H.R. 4194 recognizes Alexander Creek as a Native Village, making it eligible to form a Village Corporation under ANCSA. The bill directs the Secretary of the Interior, in his sole discretion, to negotiate and enter into an agreement by December 31, 2012, with the Native Village Corporation of Alexander Creek "to settle aboriginal land claims and any other claims of such Native Village Corporation against the United States fairly, reaching an agreement in approximate parity with those of other Alaska Native Village Corporations." The bill does not prescribe any benefits and does not guarantee what they will be, if any. It is possible that any agreement struck by the government and Alexander Creek, pursuant to this bill, may be subject to authorization by Congress.

H.R. 4194 requires Alexander Creek, upon being recognized as a Village, to notify its members that they shall cease receiving certain revenue-sharing benefits available to them under section 7(m) of ANCSA. Such members, however, will be eligible for revenue sharing payments established under section 7(j) of ANCSA. These revenue sharing measures in ANCSA provide for the redistribution of 70% of revenues derived by all Alaska Native Regional Corporations from the development of timber and subsurface resources on their settlement lands.

Finally, the bill ensures the entitlement to lands that Alexander Creek obtained as a Group Corporation is not diminished by the change in its status.

The Committee was perplexed to see that the score prepared by the Congressional Budget Office presumes that the likely settlement option open for Alexander Creek is the payment of funds from the Judgment Fund. However, the Committee notes that nothing in the legislation authorizes such a payment and that if a land settlement—the preferred and usual result under ANSCA—is not possible, it is very likely that further legislation would be necessary to provide any direct payments to Alexander Creek Native Village Corporation.

#### COMMITTEE ACTION

H.R. 4194 was introduced on March 8, 2012, by Congressman Don Young (R-AK). The bill was referred to the House Committee

on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on the bill. On August 1, 2012, the Full Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 4194—A bill to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes*

Summary: CBO estimates that enacting H.R. 4194 would cost \$30 million over the 2013–2022 period. Because those costs would increase direct spending, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues or spending subject to appropriation.

Estimated cost to the Federal Government: H.R. 4194 would designate the Alexander Creek community in Alaska as a Native village under the Alaska Native Claims Settlement Act of 1971 (ANCSA). The community is currently recognized as a Native group under ANCSA. The legislation would require the Department of the Interior (DOI) to settle land and other claims with the newly designated Native village by December 31, 2012.

ANCSA established a process to classify Native Alaskan communities for the purpose of conveying nearly 44 million acres of federal land to those communities. Under ANCSA, Native villages are entitled to about 69,000 acres, and Native groups can receive up to about 8,000 acres. The Alexander Creek community was classified as a Native group in 1974, and that classification was affirmed and codified in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). In that agreement, the Alexander Creek community was entitled to receive almost 8,000 acres of federal land. H.R.

4194 would supersede the ANILCA agreement and would classify the Alexander Creek community as a Native village, allowing them to receive an additional 61,000 acres of land.

CBO estimates that 61,000 acres of land in this area of Alaska would have an appraised value of about \$30 million. Because most eligible lands have already been conveyed to the state of Alaska, CBO expects that the settlement under H.R. 4194 would be in the form of a monetary settlement from the Treasury's Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States). However, the cost of the settlement under H.R. 4194 ultimately would depend on the terms agreed upon by DOI and the Alexander Creek Native Village. (The bill does not specify the terms of the settlement agreement.) If the settlement were in the form of a transfer of federal land to the Alexander Creek community, for example, the legislation would have a negligible federal cost.

**Pay-As-You-Go Considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4194, A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AS ORDERED REPORTED ON AUGUST 1, 2012

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013– 2017	2013– 2022	
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Im- pact .....	30	0	0	0	0	0	0	0	0	0	30	30	

**Intergovernmental and private-sector impact:** H.R. 4194 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting the bill would benefit Alexander Creek.

Estimate prepared by: Federal costs: Martin von Gnechten; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private-sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting H.R. 4194 would cost \$30 million over the 2013–2022 period. Because those costs would increase direct spending, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues or spending subject to appropriation.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Alaska Native Claims Settlement Act

to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### ALASKA NATIVE CLAIMS SETTLEMENT ACT

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#### **SEC. 43. ALEXANDER CREEK VILLAGE RECOGNITION.**

(a) *RECOGNITION OF THE VILLAGE OF ALEXANDER CREEK.*—Subject to the limitations of this section and notwithstanding section 1432(d) of the Alaska National Interest Lands Conservation Act (Public Law 96-487) to the contrary, Alexander Creek, located within Township 15N, Range 7W, Seward Meridian, Alaska, is and shall be recognized as an eligible Native village under section 11(b)(3) of this Act.

(b) *DEFINITIONS.*—For the purposes of this section, the following terms apply:

(1) The term “agency” includes—

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government identified in chapter 91 of title 31, United States Code.

(2) The term “Alexander Creek” means Alexander Creek Incorporated, an Alaska Native Group corporation, organized pursuant to this Act.

(3) The term “Region” means Cook Inlet Region Incorporated, an Alaska Native Regional Corporation, which is the appropriate Regional Corporation for Alexander Creek under section 1613(h) of this Act.

(c) *ORGANIZATION OF ALEXANDER CREEK.*—As soon as practicable after enactment of this section, Alexander Creek shall cause to be filed—

(1) any amendments to its corporate charter in the State of Alaska necessary to convert from a Native group to a Native Village corporation; and

(2) if necessary, any amendments to its corporate charter and governing business documents that fulfill the terms of the agreement authorized under this Act.

(d) *AUTHORITY AND DIRECTION TO NEGOTIATE.*—Not later than 30 days after the date of the enactment of this section, the Secretary shall open discussions and subsequently negotiate and, in the Secretary's sole discretion on behalf of the United States, enter into an agreement by December 31, 2012, with the Native Village Corporation of Alexander Creek (hereinafter, "Alexander Creek") to settle aboriginal land claims and any other claims of such Native Village Corporation against the United States fairly, reaching an agreement in approximate parity with those of other Alaska Native Village Corporations, notwithstanding Alexander Creek's prior status as a Group Corporation.

(e) *SHAREHOLDER PARTICIPATION.*—Alexander Creek shall notify each member of the Native village recognized under this section that, upon the effective date of this section, such members shall cease to receive benefits from the Region as at-large shareholders pursuant to section 7(m), and that all future resource payments from the Region shall be made to the Village Corporation pursuant to section 7(j). The Region shall not be liable under any State, Federal, or local law, or under State or Federal common law, for damages arising out of or related to the cessation of payments to such individuals under section 7(m) pursuant to this section.

(f) *STATUTORY CONSTRUCTION.*—Nothing in this section shall be construed to—

(1) limit, alter, violate, breach, or otherwise affect the rights of any party under a contract, settlement agreement, or land exchange entered into prior to enactment of this section between Alexander Creek and any party, or one or more parties to any contract, settlement, agreement, or land exchange predicated upon Alexander Creek's Native village status under this Act; or

(2) diminish or reduce the acreage entitlement to which Alexander Creek became entitled to as a Group Corporation.

## DISSENTING VIEWS

H.R. 4194 will amend the Alaska Native Claims Settlement Act (ANCSA) to recognize Alexander Creek Inc., currently recognized as an Alaska Native Group, as an Alaska Native Village. As a Native Village, Alexander Creek will be eligible for similar treatment as other Native Villages under ANCSA, including eligibility to receive between 69,120 acres to 161,200 acres of land from the public domain in Alaska. While we recognize the unfortunate history behind Alexander Creek's designation as a Native Group, and sympathize with those circumstances, we cannot recommend that H.R. 4194 advance in the House. H.R. 4194 would upset settled law with respect to Alaska Native Village and Group land conveyances established by ANCSA and create unwise precedent on the finality of tribal legislative settlements.

Alexander Creek's eligibility as a Native Village was ultimately resolved in a Stipulated Agreement in 1979 and codified in the Alaska National Interest Lands Conservation Act. In signing the settlement agreement, in which Alexander Creek, Cook Inlet Region Incorporated (CIRI), and the United States were parties, Alexander Creek dropped its claim to be a village in exchange for group status and up to 7,680 acres of land. The agreement released the United States from liability for any land claims the group had against it. To turn back the clock, as H.R. 4194 will, to nullify this agreement would reopen Alexander Creek's land claims against the United States and expose the federal government to monetary liability it settled over 30 years ago. It goes without saying that reopening land claims because a party to the settlement has buyer's remorse, as Alexander Creek clearly does here, will establish dangerous precedent for reopening *all* Indian land settlements with the United States. The House should not approve bills that expose the federal government to land claims of unquantified liability, especially if those claims have been resolved and discharged with finality through codification at law.

Moreover, H.R. 4194 will, as the Department of the Interior testified, have "serious consequences" respecting land conveyances in south-central Alaska, which is in a late stage of implementation of those conveyances. Even Alexander Creek's President Thompson admitted at the Subcommittee hearing on the bill that all the land selections in Alaska have been made by others, including the State and boroughs, so the only eligible lands that remain are "unselected" or part of the national park system. It is therefore troubling that H.R. 4194 does not address the process for selection of entitlement lands, or even approximate how much land the group could receive or where, instead leaving it to the discretion of the Secretary of the Interior to sort out with the group. H.R. 4194 simply directs the Secretary to negotiate and enter into an agreement with Alexander Creek to "settle aboriginal claims and other



claims . . . against the United States fairly, reaching an agreement in *approximate parity* with those of other Alaska Native Village Corporations. . . .” (emphasis added) “Approximate parity” is not defined in the bill. This lack of certainty is problematic, especially in light of the fact that H.R. 4194 amends existing law.

H.R. 4194 will re-expose the United States to liability that was settled by stipulated agreement and codified more than 30 years ago. It lacks fundamental and necessary details on land selection and conveyance to Alexander Creek of lands the group argues it is owed as a Native village under ANCSA, and further fails to approximate how much land the group could receive or where it could select such land from. This bill will have serious repercussions on the framework for land conveyances established by ANCSA and create precedent by which other dissatisfied groups may seek redress. H.R. 4194 should be rejected by the House.

EDWARD J. MARKEY.  
BEN RAY LUJÁN.

